

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

LESLIE R. LEONARDO,

Case No. 2:18-cv-00279-CWH

Plaintiff,

ORDER

V.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security
Administration,

Defendant.

The case involves review of an administrative action by the Commissioner of Social Security (“Commissioner”) denying Plaintiff Leslie Leonardo’s (“Plaintiff”) application for supplemental security income under Titles II and Title XVI of the Social Security Act. The court has reviewed Plaintiff’s motion to remand (ECF No. 18), filed June 4, 2018, and the Commissioner’s response and cross-motion to affirm (ECF No. 24), filed August 30, 2018. The parties consented to have a United States magistrate judge conduct all proceedings in this case and order entry of a final judgment under 28 U.S.C. § 636(c). (Consent (ECF No. 13).)

A. BACKGROUND

1. Procedural History

In May 26, 2016, Plaintiff applied for disability insurance benefits and supplemental security income under Titles II and XVI of the Act, alleging an onset date of November 1, 2014. AR¹ 81-82. Plaintiff's claim was denied initially, and on reconsideration. AR 151, 158. A hearing was held before an Administrative Law Judge ("ALJ"), and on July 21, 2017, the ALJ

¹ AR refers to to Administrative Record in this matter. (Notice of Manual Filing (ECF No. 16).)

1 issued a decision finding Plaintiff was not disabled. AR 20-31. The ALJ's decision became the
2 Commissioner's final decision when the Appeals Council denied review. AR 2-5. Plaintiff, on
3 February 14, 2018, commenced this action for judicial review under 42 U.S.C. §§ 405(g). *See*
4 ECF Nos. 1, 4.

5 **2. The ALJ Decision**

6 The claimant met the insured status requirements of the Social Security Act through
7 September 21, 2121. AR 22. The ALJ followed the five-step sequential evaluation process set
8 forth in 20 C.F.R. §§ 404.1520 and 416.920. AR 21-22. At step one, the ALJ found that Plaintiff
9 had not engaged in substantial gainful activity from the alleged onset date of November 1, 2014.
10 AR 22. At step two, the ALJ found that Plaintiff had medically determinable "severe"
11 impairments of depressive disorder and degenerative disc disease of the lumbar spine. *Id.* At
12 step three, the ALJ found that Plaintiff did not have an impairment or combination of
13 impairments that met or medically equaled a listed impairment in 20 CFR Part 404, Subpart P,
14 Appendix 1. AR 23. At step four, the ALJ found that, through the date last insured, the claimant
15 had the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) and
16 416.967(b) except that she is unable to climb ladders, ropes or scaffolds, or balance. She is able
17 to occasionally crouch and crawl, and frequently climb ramps and stairs, stoop and kneel. She
18 needs to avoid work at unprotected heights or around dangerous machinery. She is able to
19 occasionally interact with coworkers and supervisors, but she needs to avoid joint projects. She
20 needs to avoid work involving high production quotas or fast paced activities. She is capable of
21 unskilled, repetitive routine work of a simple task nature with few variables. AR 24-25. The ALJ
22 also noted that Plaintiff is unable to perform past relevant work. AR 29. At step five, the ALJ
23 found that Plaintiff is a younger individual age 18-49, has at least a high school education, and is
24 able to communicate in English. *Id.* Transferability of job skills is not material to the
25 determination of disability because using the Medical-Vocational Rules as a framework supports
26 a finding that the claimant is "not disabled," whether or not the claimant has transferable job
27 skills. *Id.* Considering the Plaintiff's age, education, work experience, and residual functional
28 capacity, there are jobs that exist in significant numbers in the national economy that Plaintiff can

1 perform. *Id.* Accordingly, the ALJ concluded that Plaintiff was not under a disability from
2 November 1, 2014, through the date of the decision, on July 21, 2017.

3 **B. DISCUSSION**

4 **1. Standard of Review**

5 Administrative decisions in social security disability benefits cases are reviewed under 42
6 U.S.C. § 405(g). *See Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002). Section 405(g)
7 states: “Any individual, after any final decision of the Commissioner of Social Security made
8 after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a
9 review of such decision by a civil action . . . brought in the district court of the United States for
10 the judicial district in which the plaintiff resides.” The court may enter “upon the pleadings and
11 transcripts of the record, a judgment affirming, modifying, or reversing the decision of the
12 Commissioner of Social Security, with or without remanding the cause for a rehearing.” *Id.* The
13 Ninth Circuit reviews a decision affirming, modifying, or reversing a decision of the
14 Commissioner de novo. *See Batson v. Commissioner*, 359 F.3d 1190, 1193 (9th Cir. 2004).

15 The Commissioner’s findings of fact are conclusive if supported by substantial evidence.
16 *See* 42 U.S.C. § 405(g); *Ukolov v. Barnhart*, 420 F.3d 1002 (9th Cir. 2005). However, the
17 Commissioner’s findings may be set aside if they are based on legal error or not supported by
18 substantial evidence. *See Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.
19 2006); *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). The Ninth Circuit defines
20 substantial evidence as “more than a mere scintilla but less than a preponderance; it is such
21 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
22 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *see also Bayliss v. Barnhart*, 427 F.3d
23 1211, 1214 n.1 (9th Cir. 2005). In determining whether the Commissioner’s findings are
24 supported by substantial evidence, the court “must review the administrative record as a whole,
25 weighing both the evidence that supports and the evidence that detracts from the Commissioner’s
26 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *see also Smolen v. Chater*, 80
27 F.3d 1273, 1279 (9th Cir. 1996).

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1 Under the substantial evidence test, findings must be upheld if supported by inferences
2 reasonably drawn from the record. *Batson*, 359 F.3d at 1193. When the evidence will support
3 more than one rational interpretation, the court must defer to the Commissioner's interpretation.
4 *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *Flaten v. Sec'y of Health and Human*
5 *Serv.*, 44 F.3d 1453, 1457 (9th Cir. 1995). Consequently, the issue before the court is not whether
6 the Commissioner could reasonably have reached a different conclusion, but whether the final
7 decision is supported by substantial evidence. It is incumbent on the ALJ to make specific
8 findings so that the court does not speculate as to the basis of the findings when determining if the
9 Commissioner's decision is supported by substantial evidence. Mere cursory findings of fact
10 without explicit statements as to what portions of the evidence were accepted or rejected are not
11 sufficient. *Lewin v. Schweiker*, 654 F.2d 631, 634 (9th Cir. 1981). The ALJ's findings "should
12 be as comprehensive and analytical as feasible, and where appropriate, should include a statement
13 of subordinate factual foundations on which the ultimate factual conclusions are based." *Id.*

14 **2. Disability Evaluation Process**

15 The individual seeking disability benefits has the initial burden of proving disability.
16 *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir 1995). To meet this burden, the individual must
17 demonstrate the "inability to engage in any substantial gainful activity by reason of any medically
18 determinable physical or mental impairment which can be expected . . . to last for a continuous
19 period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). More specifically, the individual
20 must provide "specific medical evidence" in support of her claim for disability. 20 C.F.R. §
21 404.1514. If the individual establishes an inability to perform her prior work, then the burden
22 shifts to the Commissioner to show that the individual can perform other substantial gainful work
23 that exists in the national economy. *Reddick*, 157 F.3d at 721.

24 The ALJ follows a five-step sequential evaluation process in determining whether an
25 individual is disabled. *See* 20 C.F.R. § 404.1520; *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). If
26 at any step the ALJ determines that he can make a finding of disability or nondisability, a
27 determination will be made and no further evaluation is required. *See* 20 C.F.R. §
28 404.1520(a)(4); *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003). Step one requires the ALJ to

1 determine whether the individual is engaged in substantial gainful activity (“SGA”). 20 C.F.R. §
2 404.1520(b). SGA is defined as work activity that is both substantial and gainful; it involves
3 doing significant physical or mental activities usually for pay or profit. *Id.* § 404.1572(a)-(b). If
4 the individual is engaged in SGA, then a finding of not disabled is made. If the individual is not
5 engaged in SGA, then the analysis proceeds to the step two.

6 Step two addresses whether the individual has a medically determinable impairment that
7 is severe or a combination of impairments that significantly limits her from performing basic
8 work activities. *Id.* § 404.1520(c). An impairment or combination of impairments is not severe
9 when medical and other evidence establishes only a slight abnormality or a combination of slight
10 abnormalities that would have no more than a minimal effect on the individual’s ability to work.
11 *Id.* § 404.1521; *see also* Social Security Rulings (“SSRs”) 85-28, 96-3p, and 96-4p.² If the
12 individual does not have a severe medically determinable impairment or combination of
13 impairments, then a finding of not disabled is made. If the individual has a severe medically
14 determinable impairment or combination of impairments, then the analysis proceeds to step three.

15 Step three requires the ALJ to determine whether the individual’s impairments or
16 combination of impairments meet or medically equal the criteria of an impairment listed in 20
17 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526. If
18 the individual’s impairment or combination of impairments meet or equal the criteria of a listing
19 and the duration requirement (20 C.F.R. § 404.1509), then a finding of disabled is made. 20
20 C.F.R. § 404.1520(h). If the individual’s impairment or combination of impairments does not
21 meet or equal the criteria of a listing or meet the duration requirement, then the analysis proceeds
22 to step four.

23 Before moving to step four, however, the ALJ must first determine the individual’s
24 residual functional capacity (“RFC”), which is a function-by-function assessment of the
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26 ² SSRs constitute the SSA’s official interpretation of the statute and regulations. *See Bray v.*
27 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1224 (9th Cir. 2009); *see also* 20 C.F.R. §
28 402.35(b)(1). They are entitled to some deference as long as they are consistent with the Social
Security Act and regulations. *Bray*, 554 F.3d at 1223 (finding ALJ erred in disregarding SSR 82-
41).

1 individual's ability to do physical and mental work-related activities on a sustained basis despite
2 limitations from impairments. *See* 20 C.F.R. § 404.1520(e); *see also* SSR 96-8p. In making this
3 finding, the ALJ must consider all the relevant evidence, such as all symptoms and the extent to
4 which the symptoms can reasonably be accepted as consistent with the objective medical
5 evidence and other evidence. 20 C.F.R. § 404.1529; *see also* SSRs 96-4p and 96-7p. To the
6 extent that statements about the intensity, persistence, or functionally limiting effects of pain or
7 other symptoms are not substantiated by objective medical evidence, the ALJ must make a
8 finding on the credibility of the individual's statements based on a consideration of the entire case
9 record. The ALJ must also consider opinion evidence in accordance with the requirements of 20
10 C.F.R. § 404.1527 and SSRs 96-2p, 96-5p, 96-6p, and 06-3p.

11 Step four requires the ALJ to determine whether the individual has the RFC to perform
12 her past relevant work ("PRW"). 20 C.F.R. § 404.1520(f). PRW means work performed either
13 as the individual actually performed it or as it is generally performed in the national economy
14 within the last 15 years or 15 years prior to the date that disability must be established. In
15 addition, the work must have lasted long enough for the individual to learn the job and performed
16 at SGA. 20 C.F.R. §§ 404.1560(b) and 404.1565. If the individual has the RFC to perform her
17 past work, then a finding of not disabled is made. If the individual is unable to perform any PRW
18 or does not have any PRW, then the analysis proceeds to step five.

19 The fifth and final step requires the ALJ to determine whether the individual is able to do
20 any other work considering her RFC, age, education, and work experience. 20 C.F.R. §
21 404.1520(g). If she is able to do other work, then a finding of not disabled is made. Although the
22 individual generally continues to have the burden of proving disability at this step, a limited
23 burden of going forward with the evidence shifts to the Commissioner. The Commissioner is
24 responsible for providing evidence that demonstrates that other work exists in significant numbers
25 in the national economy that the individual can do. *Yuckert*, 482 U.S. at 141-42.

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1 3. **Analysis**

2 a. *The ALJ's RFC Determination*

3 1. Mental RFC

4 Plaintiff first challenges the ALJ's assessment of Plaintiff's mental RFC, arguing that the
5 ALJ erroneously discounted the opinion of Plaintiff's treating psychologist in favor of the opinion
6 of a non-examining state agency physician, and failed to provide adequate reasons for the weight
7 accorded to each source. Specifically, she argues that Dr. Fyfe issued a mental capacity
8 assessment that contradicts the RFC, indicating that Plaintiff is markedly limited in ability to
9 perform activities within a schedule, maintain regular attendance, be punctual, or complete a
10 normal workday or workweek without interference from symptoms, but the ALJ selectively
11 discussed only the benign portions of the treatment notes. The Commissioner responds that the
12 ALJ discussed the opinion in the decision and summarized the relevant objective findings in
13 reaching the RFC.

14 The ALJ may not give controlling weight to a treating physician's medical opinion unless
15 it is well-supported and not inconsistent with other substantial evidence in the record. *See* 20
16 C.F.R. § 404.1527(c)(2) ("If we find that a treating source's opinion . . . is well-supported . . . and
17 is not inconsistent with the other substantial evidence in your case record, we will give it
18 controlling weight"). An ALJ "will always give good reasons" in the decision for the weight
19 given to a treating source's opinion. *Id.* A decision to discredit an uncontradicted medical
20 source's opinion must be supported with "clear and convincing reasons. *See, e.g., Turner v.*
21 *Comm'r of Soc. Sec.*, 613 F. 3d 1217, 1222 (9th Cir. 2010). Thus, to reject a treating physician's
22 opinion, an ALJ must give good reasons that are supported by "clear and convincing reasons."

23 Here, the ALJ extensively reviewed and summarized psychological evidence of Plaintiff's
24 mental illness. AR 26-27. He discussed in great detail Plaintiff's involuntary admissions, noting
25 the details of her evaluations and discharge notes. He noted that she was not complaint with her
26 medications, that she had numerous normal findings upon mental status examinations, had good
27 insight, logical and goal directed thought process and normal thought, as well as depressive
28 symptoms and some suicidal ideation. Hallucinations by Plaintiff were both claimed, and denied.

1 He found that treatment notes reveal that objective findings do not support the claimant's
2 subjective complaints. He also considered the findings of state agency psychological consultants
3 Dr. Soseh and Dr. Kotler. They opined that Plaintiff would be able to sustain adequate attention
4 and concentration, as well as persistence and pace to complete simple tasks in a well-spaced work
5 setting, and would be able to interact appropriately with co-workers. Accordingly, he gave great
6 weight to their opinions because he found they are consistent with the record as a whole. AR 27.

7 The ALJ also extensively reviewed and summarized the relevant opinions and findings of
8 Dr. Fyfe. AR 23-24. He found that the degree of limitations found by Dr. Fyfe are without
9 substantial support from the other evidence of record, which renders it less persuasive, and
10 specifically, that the record does not support a finding that the claimant's depressive disorder
11 causes greater than moderate limitation in her ability to function. Accordingly, he gave little
12 weight to Dr. Fyfe's opinion because he had clear and convincing reasons for doing so.

13 The court therefore concludes that in reaching the mental aspects of the RFC, the ALJ did
14 not err in considering the consultative opinions of Drs. Soseh and Kotler in deciding that
15 Plaintiff's RFC to include that she is "able to occasionally interact with coworkers and
16 supervisors, but needs to avoid joint projects. She needs to avoid work involving high production
17 quotas or fast paced activities. She is capable of unskilled, repetitive routine work of a simple
18 task nature with few variables."

19 2. Physical RFC

20 Plaintiff next argues that the RFC is unsupported by substantial evidence because, despite
21 acknowledging that Plaintiff suffers from severe degenerative disc disease, the ALJ failed to
22 develop the record and obtain an opinion from a treating or examining source regarding her
23 physical functional capacity. The Commissioner responds that the ALJ properly relied upon the
24 opinion of the state agency physician in deciding the RFC.

25 It is the responsibility of the ALJ, not a physician, to determine residual functional
26 capacity. *Vertigan v. Halter*, 260 F. 3d 1044, 1049 (9th Cir. 2001). It is the ALJ's duty to review
27 and interpret the medical opinion evidence and state his findings. 20 C.F.R. 404.1527;
28 *Magallanes v. Bowen*, 881 F. 2d 747, 755 (9th Cir. 1989) (the specific and legitimate standard

1 was met where the ALJ “summarized the facts and conflicting clinical evidence in detailed and
2 thorough fashion, stating his interpretation and making findings”). The ALJ is not required to
3 accept all the limitations found by the state agency doctors. *Id.* (When weighing a medical
4 opinion, the ALJ can consider some portions less significant than others when evaluated against
5 other evidence in the record).

6 Here, the ALJ explained that the record did not reveal the type of significant findings that
7 would support the Plaintiff’s allegation of disabling back pain. He discussed the admission and
8 treatment notes at several treatment centers, noting that although a lumbar spine MRI revealed
9 spondylitic changes with disc bulge and radiculopathy, she was not in acute stress, reported doing
10 fair, had no neurological deficits, and had normal range of motion and ambulation. AR 27-28.
11 He also noted that she had received some relief from trigger point injections, and had 5/5 strength
12 in her lower extremities.

13 The ALJ explained that he gave great weight to state agency Dr. Ribeiro’s opinion, which
14 was that Plaintiff could perform work at light exertional level, because it is consistent with the
15 record as a whole. AR 28. State agency medical consultants and other program physicians are
16 “highly qualified” physicians who are also experts in Social Security disability evaluation. *See* 20
17 C.F.R. 404.1513a(b)(1). *See Thomas v. Barnhart*, 278 F.3d 948, 957 (9th Cir. 2002) (“the
18 opinions of non-treating or non-examining physicians may also serve as substantial evidence
19 when the opinions are consistent with independent clinical findings or other evidence in the
20 record”).

21 The ALJ also found that Plaintiff had admitted certain abilities which provide support for
22 part of the RFC conclusions—that she lives alone and cares for herself, shops, prepares meals,
23 handles her finances, and has hobbies and spends time with others. She also worked after the
24 alleged onset date, and although that work activity did not constitute disqualifying substantial
25 gainful activity, it does indicate that claimant’s daily activities have, at least at times, been
26 somewhat greater than she had reported. AR 28.

27 Under these circumstances, the ALJ did not err when he considered the clinical evidence
28 and stated his RFC conclusions that included a limitation that Plaintiff could perform light work.

1 The ALJ evaluated the medical evidence and opinions and made a rational interpretation of the
2 overall record. *See Batson*, 359 F.3d at 1196 (“When evidence reasonably supports either
3 confirming or reversing the ALJ’s decision, we may not substitute our judgment for that of the
4 ALJ”). It is within the ALJ’s province to resolve any conflicts in opinion and interpret the
5 medical opinion evidence. *Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir. 2007).

6 **C. CONCLUSION**

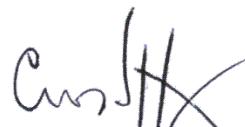
7 Viewing the evidence as a whole, the court finds that the ALJ’s determination that
8 Plaintiff is not disabled is supported by substantial evidence.

9 **IT IS THEREFORE ORDERED** that Plaintiff’s Motion to Remand (ECF No. 18) is
10 DENIED.

11 **IT IS FURTHER ORDERED** that the Commissioner’s cross-motion to affirm (ECF No.
12 24) is GRANTED.

13 **IT IS FURTHER ORDERED** that the clerk of court must enter judgment in favor of
14 Nancy A. Berryhill, Acting Commissioner of Social Security, and against Plaintiff Leslie
15 Leonardo.

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17 DATED: January 29, 2019

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C.W. HOFFMAN, JR.
21 UNITED STATES MAGISTRATE JUDGE
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